

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

SOPHIA JOANNE GIBBONS,

Plaintiff,

vs.

CIVIL ACTION NO. 1:06CV75

UNITED STATES OF AMERICA, et al.,

Defendant.

REPORT and RECOMMENDATION/OPINION

The Court has received and reviewed Plaintiff's Third Motion to Proceed *In Forma Pauperis* [Docket Entry 11].

All litigants are required to pay the costs and fees associated with civil lawsuits unless their financial conditions warrant the granting of *in forma pauperis* status.

Review of Plaintiff's motion reflects Plaintiff has an earned income of \$529.00 per month from Social Security. In Plaintiff's Second Motion to Proceed *In Forma Pauperis* [Docket Entry 9], Plaintiff had avowed earned income of \$629.00 per month. Plaintiff's explanation for the decrease in income is the alleged inability to continue part-time work due to the scheduling of surgery. The surgery is "coronal browlift" and "bilateral upper lid blepharoplasty." The estimate of surgical fees is unsigned by Dr. William W. Adams and it is noted, with interest, that the estimate contains following specific language: "[l]ifting and tightening **my** forehead by removing excess skin" and "[r]emoval of excess skin and fat from **my** upper eyelids." It seems odd that the description of the procedure would have been written in the first person by the doctor or his staff.

Notwithstanding the above, Plaintiff's bank statement shows that she received \$520.00, which was directly deposited to her bank account on July 3, 2006, of which \$519.00 was withdrawn by a counter withdrawal on the same date, leaving a balance in the account of \$1.00. Plaintiff's financial statement also shows that Plaintiff owns her mobile home, which she values at \$3,000.00, and an automobile, which she values at \$2,000.00, with no supporting documentation.

Based on the totality of the information submitted, the undersigned finds Plaintiff has adequate funds, a portion of which could be saved over a period of time, to pay the required filing fee and other costs incident to this civil action.

Pursuant to the unpublished decision of Gent v. Radford University, 187 F.3d 629 (4th Cir., 1999), a copy of which is attached, the undersigned concludes that the denial of *in forma pauperis* may be dispositive. The parties have not consented to Magistrate Judge jurisdiction, pursuant to 28 U.S.C.A., § 636(c).

Accordingly, it is **RECOMMENDED** that Plaintiff's Third Motion to Proceed *In Forma Pauperis* [Docket Entry 11], filed July 21, 2006, be **DENIED**. It is further recommended that Plaintiff pay the filing fee and other fees in the amount of \$350.00 to the Clerk of the United States District Court for the Northern District of West Virginia within thirty days of the entry of any order by the District Court determining Plaintiff is not entitled to *in forma pauperis* status. It is further recommended that the Clerk of the United States District Court for the Northern District of West Virginia not process Plaintiff's Complaint until said \$350.00 filing fee has been fully paid by Plaintiff. It is further recommended that, in the event the District Court concludes that Plaintiff is not entitled to *in forma pauperis* status, Plaintiff be advised that any failure on her part to pay the \$350.00 filing fee within thirty days of the entry of the District Court's order will result in dismissal without prejudice of her action from the docket of active cases pending before the Court.

Any party may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Honorable Irene M. Keeley, Chief United States District Judge. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such report and recommendation. 28 U.S.C. § 636(b)(1); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985)

DATED: July 24, 2006

/s/ *John S. Kaull*
John S. Kaull, United States Magistrate Judge

187 F.3d 629
187 F.3d 629, 1999 WL 503537 (C.A.4 (Va.))
(Cite as: 187 F.3d 629)

[Briefs and Other Related Documents](#)

NOTICE: THIS IS AN UNPUBLISHED OPINION.(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA4 Rule 36 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Fourth Circuit.

Jerry L. GENT, Plaintiff-Appellant,
v.
RADFORD UNIVERSITY,
Defendant-Appellee.
No. 99-1431.

Submitted July 8, 1999.
Decided July 16, 1999.

Appeal from the United States District Court for the Western District of Virginia, at Charlottesville. B. Waugh Crigler, Magistrate Judge. (MISC-99-1).

Jerry L. Gent, Appellant Pro Se.

Before NIEMEYER, WILLIAMS, and KING, Circuit Judges.

OPINION

PER CURIAM.

*1 Jerry L. Gent appeals the magistrate judge's order denying his motion to proceed in forma pauperis and noting that the case would be dismissed with no further action of the court if Gent failed to pay the filing fee within fourteen days. The magistrate judge may only enter dispositive orders if the parties consent to the magistrate judge's jurisdiction pursuant to 28 U.S.C.A. § 636(c) (West 1993 & Supp.1999).

Because the parties did not consent to the magistrate judge's jurisdiction, proper review of the magistrate judge's order is in the district

court. See 28 U.S.C.A. § 636(b). This court has no jurisdiction over the appeal. See Tripati v. Rison, 847 F.2d 548 (9th Cir.1988); see also Mendes Junior Int'l Co. v. M/V Sokai Maru, 978 F.2d 920, 924 (5th Cir.1992); Silberstein v. Silberstein, 859 F.2d 40, 41-42 (7th Cir.1988). Accordingly, we remand this case to the district court for further proceedings consistent with this opinion. See 28 U.S.C. § 2106 (1994). We grant Gent's motion to proceed on appeal in forma pauperis. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

REMANDED

C.A.4 (Va.),1999.
Gent v. Radford University
187 F.3d 629, 1999 WL 503537 (C.A.4 (Va.))

[Briefs and Other Related Documents](#) ([Back to top](#))

- [99-1431](#) (Docket) (Apr. 02, 1999)

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